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THE JOURNAL OF PHILOSOPHY

PSYCHOLOGY AND SCIENTIFIC METHODS

SOCIETIES

THE FOURTEENTH ANNUAL MEETING OF THE WESTERN PHILOSOPHICAL ASSOCIATION

THE fourteenth annual meeting of the Western Philosophical Association met, in conjunction with the Conference on Legal and Social Philosophy, in Chicago, April 9 and 10. This well-attended meeting probably marks the beginning of certain new things in the philosophical work of the Middle West. The discussion centered chiefly around three topics, the realistic doctrine of relations, the new conception of natural rights, and the relation of rule to discretion in the administration of law. Professor Cohen, the secretary of the conference, contributed much to the discussion of relations, while both he and Professor Thilly, representing the eastern part of the country, helped in the joint sessions. Many appreciations of the meetings were to be heard, and especially of the part played in them by the legal fraternity of the Middle West.

The meetings opened Thursday morning, in the law building of the university, with Professor B. H. Bode presiding. The first paper, "The Reality of Religion," by Professor G. J. Kirn, of Northwestern College, maintained that the object of religious worship is determined by certain fundamental instincts. The cognitive instinct demands that that object shall comprehend whatever is necessary to render experience a consistent whole; the affective instinct, that it shall be worthy of love and loyalty; and the volitional instinct, that it shall contribute to greater efficiency in life. Religion thus grows out of reality and effects adjustment to reality and hence is itself real. God is a mental construct, an hypothesis if you will, the basis of our experiment with reality. Professor G. D. Walcott, of Hamline University, asked whether this conception of religion does not imply that God is a creation of man. Are not the gods of savages as real as ours? To which Professor Kirn replied that the latter are relatively real, and so also is God as conceived by ourselves,—real so far

as found real in experience. Only so can God appeal to man as a constant object of aspiration and faith.

The second paper, "The Pragmatism of Pascal," was by Professor Norman Wilde, of Minnesota University. Pascal was not a pragmatist, but neither was he technically anything else. Meanwhile, such terms as nature, instinct, the heart, feeling, etc., occur with great frequency in his philosophical writings. Cousin criticizes him as a skeptic, but that is shallow. Pascal's thunderings against reason are really directed against the demonstrability of all truth. One must be a Pyrrhonist, a geometrician, and a Christian. As to the nature of knowledge he is a Cartesian: its bases are indemonstrable. Nature and instinct compel belief,—and also doubt. The determining factor in truth is not logical, but practical. He doubts facts as much as theories, and never wearies of pointing out our ignorance as to the causes and connections of things. He is a thorough empiricist and, as to conception, a voluntarist. "The will is one of the chief factors in belief," not because it creates belief, but because truth is relative to our viewpoint. Custom furnishes the hardest proofs. His famous wager is typical of his doctrine of belief. If we subdue the passions and act as if we believed, the belief will come. To know we must first love: the heart has reasons which the mind knows not of. This is Augustinism and Paulinism, but not pragmatism. In his anthropocentric tendencies, however, one feels the modernness of Pascal.

Professor H. B. Alexander next read a paper, on "The Definition of Number," which can be summarized as follows. "The logistic conception of number, starting with the assumption of *class* as the essential numerical idea, proceeds in two directions. (a) Outwardly, it posits a limit within which must fall all the elements which make the class a class, capable of structure. And that this outward limitation is made in good faith, as essential to the idea, is sufficiently evidenced by the recognized possibility of a class including classes, of a class of classes, and finally of the class of all possible classes,—a veritable hierarchy of types of limitation. (b) Inwardly, there are posited two types of structural relation, which may be described as the principles of internal limitation. These are the relation of part-to-part and part-to-whole. From the first is derived that freedom to make comparisons which makes possible,—or, *is* the possibility of,—the transcendental independence that distinguishes pure number. From the second flows the whole concept of order, and especially the notion of series or progression without which the idea of quantity (*i. e.*, greater-less) could not be. Three concepts seem to predominate in this construction, namely, *class*, *element*, *relation*. But the two first, class and element, are surely no other than the two mean-

ings which we commonly ascribe to unity, while relation is quite as clearly *the* function (and therefore the meaning) of plurality." The one and the many are thus the fundamentals of number, and we seem to have returned to the Hellenic categories. Has the wheel of time completed its circuit, or is logistic but an exercise of the lovers of Uranian reason?

Professor M. C. Otto read a paper on "The Utility of the Syllogism." The objections here urged against the syllogism are three: (1) The syllogism is a useless device in the face of genuine difficulty. The "fallacies" emphasized, illicit major, undistributed middle, etc., are manufactured and spurious difficulties. (2) This inadequacy of the syllogism is concealed by over-simplification of the field in which tests are applied. That is, the face of the syllogism is saved by treating as non-existent the only kind of arguments which perplex any one, namely, complex ones. It is an inherent defect of the syllogism to be of use where there is no difficulty and to be misleading where there is. (3) The doctrine of the syllogism is based upon an untenable conception of truth. The syllogism assumes the existence of a changeless, eternal truth, which we may approximate by relating specific conclusions to universal propositions *via* the syllogism. When these so-called universals are examined, they turn out to be true only in a setting; universal with a reservation. There is always a question, therefore, whether the "universal" is true in the sense it is taken to be true, and this can not be determined without reference to the particular investigation in which the universal plays the title rôle. But this is to admit the relativity of truth, with which the syllogism can have no dealings. It is time to break completely with a device which, interesting as it is historically, is as unreliable in genuine perplexity as it is imperious in its claims and demands, and which stands in the way of a logic in harmony with the needs of human experience.

Professor Boodin urged that the syllogism none the less deals with a certain type of implication and has a genuine place in logic. Professor Swenson pointed out that we are apt to misunderstand the purpose and idea of the syllogism. It exposes the structure of reasoning, whatever the subject-matter may be. A general theory for the avoidance of error does not exist, and hence the psychology of actual thinking can not be formulated in syllogistic terms, and yet the psychology of actual thinking will have implicit syllogisms in it. President Bode was invited to defend his chapter on "The Value of the Syllogism," and responded that the syllogism has nothing to do with the structure of our actual thinking. Professor Tufts pointed out that the paper does not say whether by syllogism is meant the process of mediate judgment, as a whole, or merely one step in that

process. Dr. Kallen thought that formal logic has some educational value as a discipline, but that it does not teach people how to think. Material fallacies can not be determined by logical forms alone. Professor Walcott felt that the syllogism with its rules has a value similar to that of grammatical rules in locating errors, and Professor Bode pointed out that in real thinking, which is usually a process of reconstructing universals, the syllogism does not help us.

Professor J. E. Boodin, in his paper entitled, "Knowledge and Social Interpretation," maintained that knowledge is nothing but social interpretation. There are, however, several types of such interpretation, and any independence of the cognitive, or other, type must be due to some social pressure. The perceptual, affective, and conceptual forms of knowledge all bear upon them the marks of social use and value. Affective knowledge or interpretation involves the massing of vast fields of meaning that are essentially social in origin. The unity of the cognitive process as pointed out by the pragmatists is a truer account of knowledge than the triadic view of Royce, Peirce, and others. Royce maintains that the interpreting community makes nature, but we do not agree to this. The community does no more than reconstruct nature. Professor Longwell asked as to the unity of the cognitive process in view of the three types of interpretation mentioned above. In answer Professor Boodin said that the latter are determined by emphasis which in turn is due to interest, temperament, and other factors. Dr. Schaub pointed out that thinking does not absolutely require language as indispensable and that Royce only means that the social renders knowledge objective.

In his "The Philosophy of Roger Bacon," Professor A. H. Lloyd mentioned the fact that this year is in a way the seven-hundredth anniversary of the great scholastic's birth. He was a forerunner of our era, but in many ways its master and teacher. Whether Lord Bacon wrote Shakespeare or not, it would be easy for a person uninformed as to the times in which they lived to believe that he wrote many passages in Roger Bacon's works. In his metaphysics he taught that "substance" can no more be mere matter than mere form. Substance can not be any one self-identical thing. Consequently, Bacon subordinated the one to the many, the universal to the particular, and so displayed a sense for method that was prophetic of our own day. He was a Franciscan and an Englishman and in both respects predisposed to anticipations of Protestantism. His appreciation of induction and experiment were products of the medieval system and organization of society. So also was his appreciation of mathematics. In formulating the details of what he saw and foresaw, he was less powerful than as a seer and prophet. The blind

and extravagant often mingle with the perspicuous and temperate in his methods. His moral philosophy was a branch of theology based on a synthesis of Mosaic law, Christian revelation, Pagan philosophy, and natural science.

Professor Moore remarked that Bacon's strength would have been considered a weakness in his day. He would have been a mere methodologist. There is no methodology at large, method is always relative to specific problems and materials. After some further comment the association passed to the next paper.

In his paper on "Consciousness in Haeckel," Professor Ray Sigbee, of Carleton College, pointed out that Haeckel recognizes three fundamental elements or aspects of reality, (1) the physical, (2) the chemical, (3) the consciously sensational (*die Empfindung*). These are not three distinct things, but three ways of viewing one thing. The quantity of matter, energy, and consciousness remains always the same,—the monal materialistic law. There is no energy without matter, no matter without energy, and no consciousness without energy and matter. Chemical reaction exhibits consciousness at its lowest level, and consciousness evolves from motion through chemical reaction to impulse and volition. Consciousness does not accompany all sensations, and the fibers which connect and relate different sensory centers in the cortex mark the point at which the purely physiological becomes consciousness. Consciousness is a form of energy which matter possesses. Aside from his dogmatism Haeckel's system is as dualistic as any other.

The papers read Thursday afternoon all had reference to the neo-realistic doctrine of relations, the programme beginning with "Externalism and Transcendentalism," by G. A. Tawney, of Cincinnati. This paper compared the definition of externalism given by Mr. Bertrand Russell with this author's theory of knowledge as stated especially in his book "The Problems of Philosophy," and came to the conclusion that the doctrine of externalism when interpreted in the light of this theory of knowledge appears to be the principle of transcendentalism reasserted. All the fundamentals of Mr. Russell's theory of knowledge are characteristic of some one or another of the transcendental philosophies. He denies that relations are the work of the mind, and this may at first seem to be a point of essential difference; but many transcendentalists deny that relations (or universals) are the work of the mind. It seems questionable whether Mr. Russell's externalism really advances the problem of relations beyond the point at which Locke and Kant left it.

In a paper entitled "Externalism as Arrested Development," by W. G. Gore, of Chicago, it was pointed out that all knowing involves inhibition, and the doctrine of externalism simply generalizes the

stage of inhibition and makes it the essence of all knowing. At this stage of the knowledge process, the old has not been given up and the new has not yet come into being, and at this stage the neo-realist finds all that he regards as essential to knowledge. It is important to have the fact of externality pointed out, both as a protection of hard-won values and as a criticism of the individual who would take liberties with these values. The increasing accessibility of the products of industry, art, and science and the increasing inaccessibility of productive participation in the corresponding processes in modern industry amount to an artificial and largely unsuspected barrier between native capacities and their normal exercise. The most deadly sort of externalism is unconscious, complacent, and idealistic. The realistic doctrine may be said to be a reflection of this very real sort of externalism, and it is remedial in bringing externalism to consciousness and correcting its illusions.

Dr. H. M. Kallen's paper, entitled "Bergson, Platonist," maintained that something more than mere movement is necessary to the Platonic idea, namely, non-being, which degrades the idea to multiplicity, externalism, and geometry. In Plato's philosophy this struggle with a foreign matter is characteristic of the knowing process. The flute-player understands a flute best. The player's idea of the flute is, consequently, not a concept or static form. It is what the mind knows when particulars are arrested. Here is the *élan vital*. The *élan* is dynamic and transcends individuals, but belongs to all. The function of the eye is freest in the vertebrate eye rather than in the pigment spot. The eye, which was originally a photograph, has turned into a photographic apparatus. This functional conception of the "idea" as an operation involving arrest and inhibition is as characteristic of Plato as it is of Bergson.

Professor E. H. Hollands read a paper on the "Externality of Relations," taking Russell's definition of the doctrine as typical. (1) Relatedness does not imply any corresponding complexity in the relata; (2) any given entity is a constituent of many different complexes. Three proofs are offered by the neo-realists (1) that from asymmetrical relation, (2) that from the nature of analysis, (3) that from the relations of simple terms.

As to the argument from asymmetrical relations the article by Mr. Schweitzer in a recent number of this JOURNAL¹ was referred to in which it is maintained, (1) that asymmetrical relations are no more ultimate in mathematics than symmetrical, (2) that asymmetrical mathematical relations are explicable on an internal basis. The second argument, that from the nature of analysis, is based on the knowledge relation. If knowledge modifies its object, the object can never

¹ Vol. XL., page 169.

be known; or again, since all thinking implies the validity of the analytic method, the validity of analysis can not be denied without self-contradiction. The first statement is gravely ambiguous. The one sense in which we can all accept the statement, "knowledge modifies its object," is that of the truism, "all known objects are knowable," or that of the postulate, "all reality is intelligible." Nothing new in the postulate, certainly; and how trivial the truism! Nevertheless, if we accept either, this particular argument for the externality of relations, in the sense in which Mr. Russell defines it, breaks down. Either the truism or the postulate implies a complexity in the thing known corresponding to the knowledge of it. In fact, if the realists are to maintain the second of Mr. Russell's principles—"any given entity is a constituent of many different complexes"—in regard to the knowing complexes, then they must give up the first—"relatedness does not imply any corresponding complexity in the relata." In reply to Spaulding's "Defense of Analysis," external relations are not the only alternative to exhaustively constitutive relations. Relations sometimes constitute terms of discourse, or entities of definition; they never constitute existences. Mr. Spaulding says, "the adequacy, the validity of analysis can be demonstrated if both the terms and organizing relations, to whose discovery analysis always leads, are considered." But the trouble is that on the theory of external relations, the relations must be, for analysis, terms of the complex. Mr. Russell recognizes this.² Propositions bear to one another relations of contradiction, implication, and so on; they are in their turn terms of a higher order. But it would be obviously absurd to say that these relations imply no corresponding complexity in their relata, that they are not grounded in their terms.

The third argument was quoted from Russell's paper in this JOURNAL.³ The first reply is, that there must be a constituent of *A* corresponding to the relation (or of *B*, as the case may be) or else a relation of the relation to *A* will be necessary, and so on, *ad infinitum*. This formal rebuttal makes us aware that we need to examine the presuppositions of the argument. These underlie the theory of external relations when it is strictly defined and kept clear of extraneous questions. They seem to be two; (1) there are absolutely simple terms, and (2) the only alternative to ultimate simplicity is infinite complexity. In the case of existent entities the first proposition must be denied. As to subsistences, they are either defined or indefinable: if defined, they are obviously not simple; if indefinable, then they are constituted by their relations as stated in the fundamental axioms in the sciences in which they appear. The other presupposition is an

² Cf. "Principles of Mathematics," page 140.

³ Vol. VIII., page 159.

instance of neglect of the systematic background of thought; relations do not require to be entirely grounded in the terms; sometimes the complexity involved is almost wholly in the system in which the terms occur. If this criticism of the three proofs is correct, the first principle in Russell's statement of the doctrine of externality must be denied, while the second one is valid, at least in many cases; for none of the objections to the proofs applies to it. While every related term has a complexity in it corresponding to its relation, it is formally possible that the same term may be a member of an indefinite number of complexes; and this Professor Hollands proposed as the valid theory of relations.

Professor Moore presented the old problem of "qualities and relations" and asked, if qualities change, what changes them if not their relations? What is meant by terms when we assert the externality of relations? What is the meaning of "us" in Mr. Russell's book, where the knowledge-relation is concerned? Professor Boodin thought that the dynamic situation is more important than the elements of the problem, which are usually isolated and set at variance with one another in such discussions as the present one. He spoke of neo-realism as consciously dogmatic and of its postulates as being consequently not very close to reality. Professor M. R. Cohen contributed to the discussion by asking whether things are external to one another. He thought that the realistic doctrine has been misunderstood. Some things make no difference to one another, and what the neo-realist means is just that. Certain qualities are internal and certain others are relations and external. In some ways the whole issue is the same as that between Plato and Aristotle, the issue between a functional and a static conception of substance. Dr. Kallen pointed out that the usual presupposition of such discussions as the present is either monadism or monism, it is that all relations are either external or internal. He then pointed out that in causation the external and internal are both present as if in a crucial case, and we should avoid hypostatizing either. Professor H. B. Alexander spoke of economies of thought represented in such realities of faith as conservation, the law of parsimony, the universality of relations, etc. These constitute the systematic background of all thought, and may be said to be valid in the sense of medieval realism. Professor Cohen then remarked that the usual assumption is that when two things appear to be external to each other, we are simply ignorant of their connection, but the neo-realist holds that externality and ignorance have nothing in common. Professor Swenson remarked that the relation of the mind to its object should be distinguished from the relation of knowledge to its object. Dr. Schweitzer stated that in symbolic logic it seems to make no difference whether we assert externalism or inter-

nalism. In ordinary logic internality of relations seems to be the truth. The disparity between the two types of logic suggests that there is need of definition and differentiation. Dr. Hartman raised the question whether either externalism or internalism is equally true of physical, chemical, biological, and psychological relations, making the point that relations which might be said to be external to their relata in a mechanical world become internal when transferred to the biological and human spheres. Professor Tawney asked whether, if the doctrine of the externality of relations means simply the externality of things, it asserts anything more than James's radical empiricism.

The President's address on "The Psychological Doctrine of Focus and Margin" will appear in the July number of the *Philosophical Review*, and no attempt will be made to review it here. It was a cogent appeal for a definition of the subject-matter and the aim of psychology in terms of behavior. From this standpoint consciousness means a specific type of control on the part of objects over bodily adaptations. The focus is the stimulus considered in relation to further stimuli; the margin is the stimulus as concerned in the guidance of bodily behavior.

On Friday morning, in the law building of the university, Professor Warner Fite opened the day's proceedings with a paper, "In Defense of Natural Rights." The older theory meant non-interference, the appeal from external control to private judgment. At present the tendency is to say that the individual is a product or function of society, so that he has duties to it, while it has none to him. The truth is we are products of our conditions only so far as we do not know what is going on in us. All values are created by consciousness. If a watch knew itself, it would have value for itself, and would have claims against its owner. The obligation of others to respect my rights is relative to my consciousness of my rights,—this, because the power to realize an end lies in the consciousness of it. What we are internally is what we produce self-consciously; all our authority as individuals is relative to this, and this is the new doctrine of natural rights. It asserts the superior rights of the more intelligent, for might does, in this sense, make right. The fundamental moral problem is that of fair competition; the moral struggle is a struggle of personal rights against vested privilege.

Professor Tufts mentioned the presuppositions of the doctrine of natural rights, as taught by Locke, namely, (1) that God commissions the individual and so gives him his natural rights, and (2) that there is always plenty of land and other values left for everybody else. These have been stripped from the doctrine, and it is asserted *in abstracto*. Are we under obligation to build a better house for a man

who is not conscious of his need of it? Ought we not build the better house and, if necessary, force him to learn to appreciate it? Professor Sharp pointed out that even such natural rights as Professor Fite has in mind are relative to the social welfare. Thus one's right to the fruits of his toil are based on his right to his own person; but a court compelled a woman to pay her share of the cost of a ditch, although she did not want the ditch dug and received no proportionate benefit from it. Locke and John Adams would have denied her obligation in this case. Professor Wright contrasted the self as particular with the self as universal, and pointed out that the latter demands sacrifice of the former. Professor Fite's system has no place for sacrifice, and this must be regarded as a weakness. Professor Moore said that Mr. Fite eliminates social meanings from the term "nature" and then brings them in again under the head of intelligence or consciousness. Surely we are about to do with the opposition of self and society what we have already done with the opposition of mind and body. The same self-consciousness that created institutions also creates the opposition of the self-conscious individual to them. The opposition is therefore only a stage in a process. Professor Fite replied, that the individual can be compelled to cooperate has been settled by the march of events. But upon what basis are we to cooperate? The answer of the natural rights theory is that this basis is the distributive principle of individual good,—each according to his intelligent share, and not each according to his ability to take and keep. For example, in state universities we often hear that education should be democratic, and this usually means that standards should be easy. But the truth is that in a tax-supported institution more should be done to keep standards up than in a privately-supported institution. Finally, the theory of natural rights holds that, however far ahead we may look, we should remember to conserve our own enjoyment as individuals.

The second paper, "*Jus Naturale Redivivum*," by M. R. Cohen, pointed out that the doctrine is now in process of revival among the jurists of many European countries. It has been argued that human beings never did exist in the assumed state of nature, and hence it is meaningless to speak of natural law; but the fact is that Hobbes, Rousseau, *et al.*, refer to something in the present. Again, the old argument assumed a self-sufficient individual who, with lordly freedom, made what contracts he pleased, while modern psychologists have shown that no such individual exists. However, contractualism is not essential to the doctrine of natural law. Again, it is said that since law is always the will of a sovereign, or an established rule, questions of natural right do not concern the jurist; natural law must be a matter of ethics, not a matter of law. However, judges are

compelled to rely upon a sense of justice, and the principles of justice are sought by systematic scientific investigation. In constitutional law, bills of rights are made up of popular, vague, moral maxims. Questions of right and wrong in external and enforceable relations involve social ethics just as much as questions of personal morality do. If it is possible to speak of a law that *ought* to be enforced and obeyed, this is certain. Professor Cohen opposed Fite's doctrine of natural right, because it identifies right with might, it eliminates the ought from the moral imperative. Once more, it is said that all things are relative and nothing is eternal; but the unity of the race and its history is as fundamental in modern history and social science as it ever was. Non-Euclidean geometries and other modern mathematics lead us to distrust the self-evidence and certainty of first principles and axioms. Evidence, clearness, and consistency are demanded. Just so, rights must be justified by experience or evidence, and they must be clear and coherent. For example, equality means indifference to differences, but modern law tends toward the individualization of punishments and the recognition of actual classes. The right to life and the right to the products of toil conflict in the case of an invalid who produces nothing. The arts of civilization all involve the same difficulty, namely, the imposition by the intelligent upon the ignorant of that which is better than the latter can know; and in this process neither the court, which represents the established order, nor philosophy, which represents the ideal good, can by itself alone mediate development. To that end the two must cooperate, and hence this conference on legal and social philosophy.

Dr. Kallen held that the rule of might comes in wherever the will of the wise is imposed upon the unwise. Socially, all rights are natural, but none are inalienable. The assumption that the will to live is more natural than the will to die underlies punishment for attempted suicide, and the doctrine of natural right recognizes this. The seat of value is always the individual, the content of value is always social, and society changes to meet the need of the individual. Might always constitutes right, whether it be that of majorities or individuals. The enforcement of law is always the expression of something that arises and maintains itself naturally. Boodin remarked that each stands at a point of intersection in a network of relations, while the unity and completeness of the whole demands many abstractions such as philosophers, lawyers, shoe-makers, etc. The underlying wisdom is the wisdom of the bee, the cosmic life that makes us feel important as individuals. Kallen replied that all reform begins with the individual. Cohen said that might and right can not be identified because might means success. We should either

stop talking about might *and* right, or else keep the two distinct. Right is a matter of values to which might and success are only incidentally relevant. Alexander spoke to similar effect. Kallen asked whether individualism is the basis of harmony in the state, while social control is a different non-individualistic basis. Alexander replied that the individual is always a citizen, a social individual. Kallen remarked that in Plato's Republic it is the social implications of individuality, conceived as natural, that underlie the state. Alexander rejoined that Dr. Kallen forgets that Plato banishes the poets and artists from the state. Kallen replied that they are outside the harmony of the state. Professor Cohen remarked that what is is not absolutely distinct from what ought to be; and Boodin, that Dr. Kallen begs the question in ignoring the fact that the individual is always the epitome of a vast system of social values. To which Kallen replied that social relations are not as internal as Dr. Boodin implies.

Dean John W. Wigmore next read a paper on "Law as a Science." He proposed the term *Nomology* for the science as a whole, and suggested four main divisions of it, which the following terms may perhaps sufficiently indicate. Nomology includes (1) Nomoscopy, = (a) Nomophysics, (b) Nomostatics, (c) Nomogenetics; (2) Nomosophy, = (a) Nomocritics, (b) Nomothetics, (c) Nomopolitics; (3) Nomodidactics; (4) Nomopractices, = (a) Nomopoetics, (b) Nomodicastics, (c) Nomodrastics. Nomoscopy is the description, history, and explanation of law; Nomosophy, the science of law as it ought to be, the attempt to harmonize one legal notion with another by subsuming both under a third. This is simply logical analysis, but the application of ethical principles gives Nomothetics. Nomocritics and Nomothetics are not separated by any plain line, any more than logic and ethics are. Nomopractices means the science of law as enforced or enforceable and comprehends methods of making law (nomopoetics), the methods by which judges apply law (nomodicastics), and the methods of pushing the law home by its application to the people (nomodrastics). Dean Wigmore spoke of the fact that all principles of law, and of the science of law, now seem to be undergoing criticism. Within the last five years, the fellow-servant principle has come to be questioned. Everything is liable to be questioned and required to give a reason for itself. Hence the real help the philosophers may render the lawyers in the development of a genuine science of law.

Professor Sharp remarked that branches 2 (a) and 2 (b) above are really the same and deal with the end of law and its administration, while 2 (c) is concerned with the means of achieving that end.

At the opening of the Friday afternoon session, Professor Albert

Kocourek read on "The Formal Relation of Rule and Discretion" and maintained that discretion is a permanent characteristic of the law and a lever of legal evolution. It may be said to add to, modify, and even substitute for the law. The courts are thought to apply the law, but specific and direct applications are rare. Even where they occur, controversy and difference of opinion are not eliminated. In the legal syllogism, the law gives only the major premise, while the minor has to be discovered in the great laboratory of litigation. English and American law is inductive, while continental or Roman law is deductive. The English judge has poorer tools to work with, but greater skill, than the continental judge. Our system tends to a great variety of rules. Sociological jurisprudence would override all rules and abandon concepts. Relative, changing, and living realities are the subject-matter of juristic science. Its method is the method of purpose and teleology. It must consider, not only the quantity and quality, but also the modality of juristic facts.

Professor Meacham spoke against the idea of government by discretion. "The rules we make in our sober hours to restrain our passionate moments are absolutely necessary." Dean Wigmore spoke of the need of a definition of discretion. It does not consist in the fact that decisions are final. It must mean, in case there were but one judge, that his decision is personal. It always means that the precise case is subsequent to the making of the rule of law by the legislature. The judge has power to introduce variations into the law, so that two judges may decide differently on the same state of facts. Any system based solely on rule will soon clog up: so will a discretionary system: the pendulum of history swings from one to the other, and the truth seems to lie in the transitions. Professor Freund spoke of the so-called English *Richterkoenigstum*, maintaining that there is greater freedom in German courts than either here or in England. Professor Cohen added that this is a Continental trait, and yet the English judge occupies the more regal position. Our common law is made by the courts, while in Europe the common law is the expression of legislative judgment. As a matter of fact there *is* discretion: no formula can estop progress. The sociological school simply insists on the wisdom of deciding cases on the basis of social science rather than on the basis of *a priori* rules or fictions. The reason for creating commissions to administer law in place of the courts is simply the fact that a commission can check up its results, whereas courts can not. Our constitutional law is a system of discretions. Discretion is the growing point of rule. The real question is whether we shall treat rules of law as fixed and changeless or as hypotheses like those of science. Dean James P. Hall pointed out that in some injunctions there is no question of

discretion, the only questions relate to facts. In other cases rules of law sometimes conflict. "Discretion is the growing point of rule," as Mr. Cohen said. Commissions exercise delegated legislative power rather than discretion. They are supposed to use scientific methods to a greater extent than courts do. Professor Freund added that judicial discretion rests on hearing the law and reasoning, whereas executive discretion does not.

David F. Swenson next read a paper on "The Epistemological Basis of General Rules," pointing out that there must be an objective and self-identical body of juristic relations. Plato's eternal and unchanging ideas are here reasserted. Meanings remain even when they change, and they admit of comparison. Logic discriminates alternative meanings and banishes lack of clearness. Custom, association, and the natural history of meanings can not be substituted for clearness and distinctness. Individual psychology alone does not account for perfect meanings. When the contents of juristic knowledge appear, they are objective and independent. But what are the actual conditions under which rules are to be applied? Can their application be said to describe a syllogism? Professor Swenson answers, No. No fact of juristic significance comes so labeled as to make its subsumption a mechanical process. That involves creative imagination based on a knowledge of the code and an understanding of the facts of the case. Only the trivial elements of the process are controlled by the abstract laws of logic. The judge's social philosophy, ethics, and knowledge of human nature enter into the process, as also do his human sympathies. Two reasons are offered for the statement that the application of law is an act of creative imagination. First, no *completely* elaborated code is possible. Any actual system of rules is full of gaps and inadequate adjustments. Secondly, it is never possible completely to express our intentions in rules of law. Hence rules of interpretation are necessary, and just rules of interpretation do not make the law, any more than gravitation makes the stone break the window. The limitations of human reason make these rules of interpretation necessary. Deciding cases on their merits is a confession of difficulty in subsuming the case under the proper rule.

F. C. Sharp then read on "The Moral Criterion in Some Recent Supreme Court Decisions," maintaining that a utilitarian theory of imperatives underlies court decisions to-day, and also the decisions of the plain man on moral and legal issues. Certain problems are dealt with by both law and ethics. We prefer the nearer good, that is to say, the good of those who are nearer to us in blood, race, occupation, etc. Again we follow the maxim, So use your own as not to injure others, but sacrifice for others is not obligatory. Again, we are

influenced by meritorious qualities in the persons concerned, very much as the boy who thinks it mean to hit a dog, but hits a cat every time. Again, we choose the greater good. This is not hedonism, but utilitarianism, the pursuit of usefulness or the good. The police power of the state includes all those unclassified residuary powers reserved to the government by the constitution. It is the power of the state to conserve the good of the state. In application this means that you must actively cooperate with others for the good of all even when you have no assurance of recompense. Underlying this is the principle of the nearer good. The courts have nothing to do with the principle of equality. Laws may operate differently on different classes provided the classification rests on a reasonable basis. No factitious equality wrought out by ignoring real differences is respected. Progress consists in eliminating certain classes of errors. What is right for one is right for others, but many judgments violate this rule. Again, the law aims at becoming a consistent system. Inconsistencies are eliminated, and these are of all degrees of subtlety. The final principle, the goal of both law and morality, is the good; and the question, What are the moral rights of the case, is as fundamental for law as for ethics.

Professor Howard Smith, of the University of Wisconsin, maintained, on the contrary, that law has nothing to do with questions of morality.

The last paper of the afternoon was on "The Nature of Social Rules" by Professor Albion W. Small. Sociology holds that we have passed the boundary between an earlier and a later period in the evolution of rules, the periods of custom and reflection. The two great questions of sociology are, Of what sort have rules been, and, Of what sort are they to be in the future? Customary rules were the will of the stronger exercised over the weaker. But rules were tempered by consideration of difficulty in enforcing them. The balance of power between many conflicting interests determined the rules of this era of evolution. To-day a new force is at work, a conception of the human lot which is likely to work a Copernican revolution in social controls. The human lot is a concurrence of reciprocal interests, recognized as a categorical imperative of objectivity. Rules are formulations of the indicated function of each interest in the economy of the whole or human lot. A social consciousness that judges each interest in reference to the rest is in process of development. An impartial spectator is an impossibility. The method is to take the judgments of experts and test them by appeal to fact, that is to say, by appeal to the part that the interest concerned plays in promoting the whole social process, whatever the latter may turn out to be. "There are no rights except rights of way in performing

social functions." The evolving ideal is that of a community of reciprocating functions.

Thursday evening the association dined at the Quadrangle Club, decided such matters of business as usually come up at business meetings, attended upon the delivery of the presidential address by Professor Bode, in the Harper Library Building, and enjoyed a smoker at the Quadrangle Club. The officers elected for the coming year are as follows: President, James H. Tufts; Vice-President, G. T. W. Patrick; Secretary-Treasurer, H. W. Wright; Executive Committee, A. K. Rogers, G. A. Tawney, H. C. Longwell, E. S. Ames. The following were elected to membership, Ray Sigsbee, E. Jordan, H. G. Townsend, M. C. Otto, H. M. Sheffer, Queen Lois Shepherd, C. H. Judd. It was decided to meet next December in conjunction with the American Philosophical Association at the University of Chicago. The treasurer reported a balance of \$115.19.

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MONTAGUE'S CLASSIFICATION OF VALUES

THE most recent classification of values is that which was presented by Professor Montague at the New Haven meeting of the American Philosophical Association, in elaboration of an earlier one.¹ The earlier treatment claimed to represent a pragmatic view of values, the later one a neo-realistic view, but the ontological implications are not very clear in either case. Fortunately, this does not affect the worth of the result.

In my former article² I reviewed Dr. Montague's first classification and with modifications adopted it in my own discussion of the factual values. Dr. Montague asserts, in brief, that adjustment of the judgments of the individual to the facts of his environment yields "the cognitive value of truth" (a realistic, perhaps, but hardly a pragmatic, view of truth); adjustment of the facts of the environment to the desires of the individual, "the conative value of good;" and "the spontaneous and unenforced adaptation of individual needs and environing facts to one another," "the affective value of beauty." So far as goodness and beauty are concerned, at least, this classification is open to serious objections. The goodness which merely fulfils the desires of the individual is hardly more than economic, certainly not moral, goodness; and the value yielded by spontaneous mutual adjustment between organism and environment is hardly more than the

¹ See this JOURNAL, Vol. VI., page 233.

² This JOURNAL, Vol. VII., pages 281-291.